

CITY OF FRISCO, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS
HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS
TO EXECUTE AN AGREEMENT FOR THE CONSTRUCTION OF LEBANON ROAD
AND OHIO DRIVE BY AND BETWEEN CREEKWOOD HILLCREST L.P. AND THE
CITY OF FRISCO.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby
authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an
Agreement for the Construction of Lebanon Road and Ohio Drive by and between
Creekwood Hillcrest L.P. and the City of Frisco, a copy of which is attached hereto
as Exhibit "A" and incorporated herein for all purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the _____ day of _____, 2000.

Kathleen A. Seei, Mayor

ATTEST TO:

City Secretary

AFTER RECORDING, RETURN TO:

Administration Department
City of Frisco, Texas
6891 Main Street
Frisco, Texas 75034

**Impact Fee Agreement
for the Construction of Lebanon Road
and Ohio Drive by and between
the City of Frisco, Texas
and Creekwood Hillcrest L.P.**

This Impact Fee Agreement (the “**Agreement**”) is made and entered into as of this ____ day of _____ 2000, by and between Creekwood Hillcrest Limited Partnership, a Delaware limited partnership, (“**Creekwood**”) and the City of Frisco, Texas (“**Frisco**”), and on the terms and conditions hereinafter set forth.

RECITALS

WHEREAS, **Frisco** desires that Hillcrest Road and Ohio Drive be constructed for the purposes of improving traffic movement and safety of the traveling public, and **Creekwood** desires that such roads be constructed and recognize a benefit ~~to~~by such construction; and

WHEREAS, **Creekwood** desires to fulfill its obligations relating to complying with **Frisco** Ordinance No. 90-06-08 and as amended by **Frisco** Ordinance Nos. 91-03-01, 93-02-07 and 94-04-07 and any amendments thereto or any future ordinance requiring the payment of like impact fees as they relate to thoroughfare impacts fees only (individually and collectively known as the “**Impact Fee Ordinance**”).

NOW, THEREFORE, in consideration of the covenants and conditions contained in this **Agreement** the receipt and sufficiency of which are hereby acknowledged, **Frisco** and **Creekwood** agree as follows:

1. Land Subject to Road Agreement. The land that is subject to this **Agreement** is approximately 79.832 acres, more or less, located north of Lebanon Road between Hillcrest Drive and Ohio Drive and more particularly described in *Exhibit “A”* attached hereto and incorporated herein for all purposes (“**Creekwood Property**”). **Creekwood** represents that it is the sole owner of the **Creekwood Property**.
2. Right-of-Way Dedication for Hillcrest Road, Ohio Drive, and Wade Boulevard intersection. ~~On or before March 31, 2000~~
 - (a) **Creekwood** shall dedicate by plat to **Frisco** ~~all the~~ the right-of-way, ~~as determined by Frisco,~~ for the construction of Hillcrest Road and Wade

Boulevard on the Creekwood **Property** as depicted in *Exhibit "B"*, which is attached hereto and incorporated herein for all purposes (the "Dedicated Roadways"). Upon execution of this **Agreement** Creekwood will execute the right-of-way dedication plat attached as Exhibit "B" and any other forms required for submittal of such plat, and will support such dedication plat through the Frisco Planning and Zoning Commission and City Council approval process. By execution of this Agreement Creekwood shall immediately grant a right of entry for Frisco onto the property to begin construction of portions of the Adjacent Roadways, as hereinafter defined.

- (b) In order to establish the proper alignment of Ohio Drive as shown on Exhibit "B", **Creekwood** shall convey to **Frisco** the property described in Exhibit "C-3", and **Frisco** shall acquire from the property owner west of Ohio Drive ("Abutting Owner") the right-of-way for Ohio Drive described in Exhibits "D-1" attached hereto and incorporated for all purposes. As part of the acquisition of the right-of-way described in Exhibit "D-1", **Frisco** shall obtain and deliver to **Creekwood** a special warranty deed from the Abutting Owner conveying to **Creekwood** the property described in Exhibit "D-2" attached hereto and made a part hereof, in exchange for a special warranty deed from **Creekwood** conveying to the Abutting Owner the property described in Exhibit "C-5", attached hereto and made a part hereof. In the event that the Abutting Owner does not agree to comply with the terms of this Section 2(b) within one year of the execution of this **Agreement**, **Creekwood** shall convey by special warranty deed the property described in Exhibit "C-4" and Ohio Drive will be constructed within that right-of-way.

3. Easements Required for Hillcrest Road, Ohio Drive, and Wade Boulevard Intersection. Immediately upon written demand of **Frisco**, Creekwood shall dedicate any and all drainage, grade to drain, water, waste water, storm sewer and any other easements, as determined by **Frisco**, necessary for the construction of Adjacent Roadways, as herein defined. All such request for easements shall be directly related to the construction of the Adjacent Roadways, as defined herein.

4. Construction of Streets and Related Improvements.

- (a) Within one hundred twenty (120) days of receiving the Hillcrest right-of-way, Frisco shall commence construction of two lanes of Hillcrest road within the boundaries of the right-of-way dedicated by Creekwood for Hillcrest Road in accordance with the completed plans attached as Exhibit "C";
- (b) Within three hundred sixty-five (365) days of receiving the right-of-way for Ohio Drive, Frisco shall commence construction of two lanes of Ohio Drive within the boundaries of the right-of-way dedicated by Creekwood for Ohio Drive;

- (c) Within one hundred twenty (120) days of receiving the Wade Boulevard right-of-way, Frisco shall commence construction of the intersection within the boundaries of the right-of-way dedicated by Creekwood for the Wade Boulevard intersection in accordance with the completed plans attached as Exhibit "D".

(d) Within ten (10) business days after final acceptance of the public improvements on the Creekwood **Property** which are the subject of this Agreement, Frisco shall release Creekwood from any and all obligations arising hereunder and shall execute and deliver to Creekwood written evidence of such release in a form reasonably acceptable to Creekwood.

5. Thoroughfare Impact Fees. The thoroughfare impact fees for the Creekwood property will be those fees established by Ordinance No. 90-06-08 with the provision that any commercial property will be assessed at \$10,000 per acre. This provision shall be valid for ten (10) years from the date of the Agreement. After ten (10) years, then the property shall be subject to whatever thoroughfare impact fees are in effect at the time of development. In the event Frisco If Frisco passes an ordinance changing the zoning on the Creekwood Property without the written consent of Creekwood, Frisco shall credit Creekwood the sum of \$200,000 for thoroughfare impact fees.

6. Notice. Any notice to be given or to be served upon a party hereto in connection with this **Agreement** must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth below. Any party hereto may, at any time by giving two (2) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

If Notice to Creekwood:
Creekwood Hillcreest L.P.
Michael T. Tonti, President
4949 Westgrove Drive
Suite 100
Dallas, Texas 75248

*If Notice to **Frisco**:*
George Purefoy, City Manager
City of Frisco
6891 Main Street

7. No Vested Rights. Nothing in this **Agreement** shall be implied to vest any rights in the parties except as are provided by statute, ordinance or as expressly provided in this **Agreement**.

8. Venue. This **Agreement** shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

9. Severability. In case any one or more provisions contained in this **Agreement** shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof, and this **Agreement** shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10. No Waiver of Governmental Immunity. Nothing contained in this **Agreement** shall be construed as a waiver by **Frisco** of its governmental immunity, except as the same may relate to the obligations of these parties as provided herein.

11. Authority. Each of the parties represent and warrant to the other that they have the full power and authority to enter into and fulfill the obligations of this **Agreement**.

12. Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this **Agreement** shall be binding upon and shall inure to the benefit of Creekwood and its respective heirs, legal representatives, successors, assigns and transferees who become owners of any portion of the Creekwood or any interest therein, whether by operation of law or in any manner whatsoever.

13. Assignment. Creekwood shall have the right and authority, subject to Paragraph 14 below, to assign this **Agreement** and all of its rights hereunder to any person, firm, corporation or other entity, and any such assignee shall be entitled to all of the rights and powers and obligations of Creekwood hereunder.

12.14. Miscellaneous.

a. a. Before this **Agreement** may be assigned, the following conditions must be satisfied:

- (i) Creekwood must provide written notice to **Frisco** of the assignment; and
- (ii) The assignment of the **Agreement** must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the approval of **Frisco**;

- (iii) At the time of any assignment, Creekwood must give the assignee written notice that any and all obligations, covenants and/or conditions contained in this **Agreement** will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of **Frisco**; and
- (iv) Creekwood will file any approved, executed assignment in the Land Records of Collin County, Texas.

b. All construction will be in accordance with applicable ordinances and regulations of **Frisco**.

c. This **Agreement** applies to thoroughfare impact fees only and does not affect water, sewer or park impact fees as they are now or may be defined and assessed in the future or any other fees that may be due on the Creekwood **Property**.

d. This **Agreement** contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties to this **Agreement**.

e. This **Agreement** shall be deemed drafted equally by all parties hereto. The language of all parts of this **Agreement** shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

f. Time is of the essence in this **Agreement**.

***** THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BALNK *****

EXECUTED as of the date first above written.

CITY OF FRISCO, TEXAS

By: _____
Kathleen A. Seei, Mayor

ATTEST:

Nan Parker, City Secretary

Creekwood Hillcrest L.P.
Texas corporation, its general partner

By: _____
Michael T. Tonti
Its: President
Date: _____

STATE OF TEXAS)
)
COUNTY OF COLLIN)

BEFORE ME, the undersigned authority, on this day personally appeared **KATHLEEN A. SEEI**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledges to me she is the duly authorized representative for the **CITY OF FRISCO** and she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2000.

Notary Public in and for the
State of Texas

My Commission Expires:

STATE OF TEXAS)
)
COUNTY OF COLLIN)

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL T. TONTI, known to me to be one of the persons whose names are subscribed to the foregoing instrument, and he acknowledges to me that he is the President of CREEKWOOD PROPERTY CORP., a Texas corporation, as the general partner of CREEKWOOD HILLCREST L.P., a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2000.

Notary Public in and for the
State of Texas

My Commission Expires:
